IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 56 OF 1996

Bhimashankar Somling Sonkamble,
Age 35 years, Occ. Labourer,
R/o. Gaudgaon (Khurd),
Tq. Akkalkot, Dist. Solapur ...Appellant.

Versus

The State of Maharashtra ...Respondent

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Mrs. Rutuja Ambekar, Advocate for the appellant.

Shri. A.S. Shitole, A.P.P. for Respondent.

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CORAM: SMT. V.K. TAHILRAMANI, J.

DATED: 16/17TH DECEMBER, 2004

ORAL JUDGMENT:-

1. Through this appeal, the appellant i.e.original accused has challenged the judgment and order dated 17.1.96 passed by the learned Additional sessions Judge, Solapur in Sessions Case No. 200/1994. By the said judgment and order, the learned Sessions Judge convicted the appellant under Section 304 Part-II and 324 of I.P.C. For the offence under section 304 part-II, the appellant came to be sentenced to R.I. for five years and for the offence under section 324 of I.P.C. the appellant

came to be sentenced to R.I. for one year. The learned Sessions Judge directed that both the sentenced shall run concurrently.

2. The prosecution case briefly stated is as under:-

. That the complainant Revubai resided jointly at village Gaudgaon alongwith her father P.W.7 Hulyappa Sonkamble, her mother Kallappa (deceased), her brother Kalyani (deceased), her bother P.W.14 Datta, other brother Shivkanta and other family members. The house of the appellant-accused was at a short distance from the house of the complainant. The accused resided in his house with his wife D.W.1 Laxmibai and his three children. As the accused suspected that P.W.14 Datta had an ill intention towards his wife Laxmibai there were strained relations between two families. Before the incident, the accused used to abuse the family of Kalyani and they in turn used to abuse the accused.

3. On 2.8.94 at about 11.00 p.m., the complainant P.W.6 Revubai and her other family members were preparing to go to bed. At that time, her brother P.W.4 Datta went outside the house to answer the call of nature, however, he did not return. After

some time Revubai heard noise of her brother Datta from the house of the accused, she rushed towards the house of the accused. She found that the door of the house of the accused was open and she saw that accused had his leg on the private part of P.W.4 Datta. Datta was saying that he was called by the wife of the accused and that he should not be beaten. Revubai tried to intervene and tried to release her brother. In the meanwhile, on hearing her noise, P.W.7 Hulyappa, Kalyani (deceased) and others came to the spot. They intervened and got Datta released. They caught hold of the accused. Datta then ran away. When they released accused Bhimashankar the accused immediately lifted Tikav (Pick-axe) and he gave a blow on the head of Kalyani. They all including Kalyani ran out of the house of the accused. The accused chased all of them. The accused gave one more blow to Kalyani. The accused then gave pick-axe blows on the head and both the hands of P.W.7 Hulyappa. P.W.6 Revubai and P.W.8 Renukabai also went there to intervene, accused gave a blow on the head of Revubai and pushed Renukabai on stones, she fell down on the ground and received stone injuries. Kalawwa (deceased) then went to intervene on which the accused gave a blow with Tikav on her head. Kalawwa then ran away towards the house of Ram Damare. The accused gave a Tikav blow on Kalawwa

near the house of Ram Damare. In the said incident both Kalyani and Kalawwa expired. Revubai then went to Akkalkot police station and lodged her complaint (Exh.32).

4. After completion of investigation charge sheet came to be filed. In due course, the case came to be committed in the Court of Sessions. The charge came to be framed against the appellant-accused for the offence under Section 302 for causing death of Kalyani and Kalawwa and under section 323 for causing hurt to Hulyappa, Renukabai and Revubai. The charge was also framed under Section 324 of I.P.C. for causing hurt with dangerous weapon to Hulyappa, Revubai and Renukabai. Charge was also framed under Section 504 and 506 of I.P.C. Appellant-accused pleaded not guilty to the said charges and claimed to be tried. The appellant has taken the defence that when he arrived at home at about 11.30 p.m. he found that Datta was present in his house and was committing rape on his wife Laxmibai. He pulled P.W.14 Datta away and asked Datta as to why he had come to his house. Thereupon, Datta told accused that he came to commit rape on his wife and the accused could not do anything to him. Accused then beat Datta. In the meantime, all persons gathered there. According to the accused, Datta and Kalyani used to

commit rape on the ladies in the village and committed acts of outraging modesty and teased the ladies and girls who used to fill water at the hand pump in the village, hence, the villagers were angry with them, hence, on the day of the incident when the mob gathered, they assaulted Kalyani and others. It is further the defence of the accused that there was no electricity in the village and it was dark, hence i was not possible for the witnesses to see the assailants.

5. After going through the evidence adduced by the prosecution, the learned Sessions Judge acquitted the appellant under Section 304, 504, 506 and 323 of I.P.C. However, the learned Sessions Judge convicted and sentenced the appellant as stated in para 1 above. Hence, this appeal.

6. I have heard Mrs. Ambekar, the learned advocate for the appellant and Shri. Shitole, the learned A.P.P. for the State. I have also perused the record pertaining to the present case. After carefully considering the matter, I am of the opinion that this appeal deserves to be allowed.

7. In the present case there are three eye witnesses i.e. the complainant P.W.6 Revubai, P.W.7 Kalawwa and P.W.8 Renukabai. As the prosecution story in para 3 above has been taken from the examination in chief of P.W.6 Revubai, I

do not find it necessary to repeat the same here as it would only over burden the judgment. Revubai claims to be an eye witness. Revubai has categorically stated that only two blows were given to Kalyani by the accused. One blow was given in the house of the accused and the other blow was given near the house of Revubai. However, if the post mortem notes and the evidence of P.W.10 Dr. More is seen, it is found that there are eight injuries on the person of Kalyani. As far as Kalawwa is concerned, Revubai has stated that after giving of second blow on the head of Kalyani by the accused, her mother Kalawa went to intervene, at that time, the accused gave one blow with pick-axe on her head. She then ran away towards the house of Ram Damare and fell down. At that time accused gave another blow with pick-axe on Kalawwa. Thus, according to Revubai only two blows were given by the accused on the person of Kalyani. However, the evidence of P.W.10 Dr. More shows that Kalyani has sustained 12 injuries. Looking to the huge discrepancy in the number of injuries actually found on both the deceased and the number of injuries as deposed by Revubai, there appears to be some doubt whether Revubai was indeed present when the incident took place.

8. P.W.6 Revubai had heard the noise from the

house of the accused, she ran to the house of accused. However, P.W.7 Hulyappa states that he heard noise of his daughter, hence he came out of his cattle shed and went to the house of the accused. In such case it does not appear possible say that P.W.7 Hulyappa reached in time to witness any part of the incident. As far as the evidence of Hulyappa and Renukabai is concerned, they have stated that the accused assaulted Kalyani as well as Kalawwa with pick-axe. However, almost all the injuries on the persons of both the deceased are not consistent with the use of pick-axe. Thus, it cannot be believed that these prosecution witnesses actually witnessed the incident of assault by the appellant on Kalyani and Kalawwa.

9. Looking to the evidence on record, there also appears serious doubt as to whether the appellant had indeed caused injuries to the deceased and the injured witnesses. According to all the prosecution witnesses the accused has used pick-axe (article 16) to assault both Kalawwa and Kalyani as well as the prosecution witnesses P.W.6 Revubai and P.W.7 Hulyappa As far as the deceased Kalyani is concerned, he had three incised wounds on his body. The said injuries are the very injuries which have proved fatal. The remaining injuries are minor in nature and could also be said to be simple in

nature. The three incised wounds are on the head, forehead and parietal region. P.W.10 Dr. More who had performed post mortem on the bodies of deceased persons, has specifically stated that injury Nos. 1 to 3 which are incised wounds on the head, forehead and parietal region are caused by sharp instrument. However, Dr. More has admitted that the pick-axe (article-16) is not having sharp edges. In view of this categorical statement made by Dr. More, the prosecution case that it was the appellant who caused three fatal injuries to deceased Kalyani with pick axe cannot be believed. The same is the case with deceased Kalawwa. Kalawwa was found to have 12 injuries on her body. Out of these eleven injuries are in the nature of incised wounds. The last injury is contusion on the parietal region which is simple in nature. Dr. More has categorically stated that all the injuries were caused by sharp instrument. As stated earlier, he has also admitted that pick axe did not have sharp edges. The pick-axe is always blunt in nature and it has no sharp edges. Thus, it is clear that the 11 injuries out of 12 caused to Kalawwa were not caused by pick-axe. In such case, the prosecution case that the accused had assaulted Kalawwa with pick-axe and caused her death cannot be believed.

10. It is also pertinent to note that Dr. More has admitted that all the injuries on Kalawwa were different in size. Dr. More has also admitted that taking the size of the injuries into consideration they were not caused by one weapon but various types of weapons might have been used at the time of assault. However, it is the prosecution case that the appellant had used only one weapon i.e. pick-axe. In such case, looking to the medical evidence on record and more specifically the evidence of Dr. More, it cannot be said that the appellant is responsible for causing any of the fatal injuries on both the deceased persons.

11. The evidence on record also shows that there was no electricity in the village. The incident had taken place at night time at about 11.30 p.m. As per the prosecution witness the major part of the incident had taken place near the house of P.w.7 Hulyappa. P.W.9 Mahmad Pathan who is the Panch witness in relation to the scene of the incident has stated that due to thick trees near the house of Hulyappa, a person cannot recognize another person unless he is very close. In fact the panchnama is also drawn on the road in the light of gas batti which shows that there was no electricity on the roads. None of the prosecution

witnesses have deposed about any electric light in the village. The incident had taken place in the open area. The villagers were using Chimany in their houses. Thus, at about 11.30 p.m. when the incident took place in the open area, it cannot be safely said that the witnesses could have been in a position to identify the appellant.

12. As stated earlier, the incident had occurred at 11.30 p.m. it was dark, the other villagers had gathered there, they had some grudge against Datta and his family members. In such case, it appears that it was some other person or persons who had assaulted the two deceased persons i.e. Kalyani and Kalawwa and the three prosecution witnesses. As per Dr.More all the three witnesses i.e. P.W.6 Revubai, P.W.7 Hulyappa and P.W.8 Renukabai could have sustained injuries due to fall. From the evidence which has come on record the prosecution case that it was the appellant who caused injuries to Kalyani and Kalawwa with the pick-axe and caused their death cannot be believed. In such case, I find it difficult to rely on the evidence of the three eye witnesses in respect of injuries caused by the appellant to them. The injuries on the persons of all the three witnesses are simple in nature. Moreover, Dr. More has deposed that the injuries could be caused by fall.

13. It is the specific defence of the accused that P.W.14 Datta and his brother Kalyani (deceased) and the members of their group used to commit rape on the ladies in the village and commit acts of outraging modesty and they used to tease all ladies and girls who used to fill water at the hand pump in the village. Due to these acts the villagers were angry with them. However, nobody dared to lodge complaint against them at the police station as they knew the police would not help them. No doubt, defence witness Laxmibai has deposed on the aspect that on the date of the incident P.W.14 Datta came inside her house. Her house did not have a door. Datta started touching her body, she started shouting. However, Datta put towel on her mouth and committed rape on her. Within five minutes, her husband (accused) came there. Accused said to Datta that he has spoiled entire village and also spoiled the house of accused. Thereafter her husband shouted loudly, lifted Datta and threw him on the ground. There was a scuffle between them. In the meantime all persons from the village had gathered there. All persons then intervened in the scuffle. In the meantime, Datta ran away and her husband went behind Datta to chase him in order to assault him. I was not inclined to place total reliance on the testimony of this witness, however,

I found that the evidence of D.W.1 Laxmibai to a certain extent is corroborated by the prosecution witness P.W.12 Murtuj Pirjade. This witness has also corroborated the defence taken by the present appellant that P.W.14 Datta, his brother Kalyani and others from their group used to commit acts of rape on the ladies in the village and outraging modesty and teased the ladies and girls who used to fill water at the hand pump and due to these acts the villagers were angry with them and on the date of the incident when Datta entered in the house of the appellant and committed rape on Laxmibai, there was a scuffle between Datta and him and villagers intervened. P.W.12 Murtuj has stated that he knew Datta. Datta and the members from his group are terrors in the village. Nobody dare to lodge complaint against them in the police station and if anybody lodges a complaint against them in the police station, he would not get relief from the police. Datta and members of his group were involved in other serious offences in the village. Datta and the members from his group were also indulging in business of prostitution. He has also admitted that Datta and the members from his group used to sit on the Katta near the hand pump in the village and teased the women and girls who used to come for filling water at the hand pump. This witness has stated that due to the said acts of

Datta and the members of his group, the villagers were angry with them. Thus, it is seen that the persons in the village also had enmity with Datta and with his family members. Thus, there was strong motive for the villagers to cause harm to Datta and his family members. That the relations between the prosecution witnesses and the appellant were strained has come on record through the evidence of P.W.7 Hulyappa. Thus, it is clear that the prosecution witnesses had the motive to implicate the appellant falsely. The evidence shows that a crowd had collected. The evidence on record also shows that the villagers had a grudge against Datta and his family members. In such case when the prosecution story that the appellant assaulted the deceased with a pick-axe is found to be totally false, it cannot be ruled out that some persons from the village assaulted the deceased and the prosecution witnesses. As it was dark the assailants could not be identified therefore, the appellant was falsely implicated.

14. One other circumstance which was sought to be used against the accused is the recovery of pick-axe (article 16). The panch witness P.W.11 Sharda Bansode has deposed on this aspect. However, it is pertinent to note that the pick axe was not sealed. The panch witness has clearly

admitted that the pick axe was not sealed. In such case the recovery of pick axe and the C.A. report cannot be taken into consideration. The learned Sessions Judge has also disbelieved the circumstance of recovery of pick-axe at the instance of the appellant and in my opinion rightly so looking to the evidence on record.

15. Looking to all these facts, I am of the opinion that the appellant deserves to be given the benefit of doubt.

16. In the result, the conviction and sentence of the appellant under Sections 304 part-II and 324 of I.P.C. is set aside. The appellant is on bail, his bail bond shall stands cancelled.

17. Appeal is allowed.